

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

En-Touch Systems, Inc. Request for Waiver
of 47 C.F.R. § 76.1204(a)(1)

CSR-7183-Z

REPLY COMMENTS OF EN-TOUCH SYSTEMS, INC.

En-Touch Systems, Inc., on behalf of itself and its affiliate ETS Cablevision (collectively, “En-Touch”) submits the following reply comments in support of its request for a waiver (“Request”) from the integration ban for the low-cost DCT-700 set-top box.

In its Request, En-Touch demonstrated that it has met the criterion for waiver established by the Commission in the *BendBroadband Order*,¹ in particular by committing to transition to an all-digital network by March 31, 2008.² The only opposition to En-Touch’s Request was filed by the Consumer Electronics Association (CEA). However, the Commission has already rejected CEA’s arguments three times, first in the *BendBroadband Order*, and most recently in two new waivers granted to GCI

¹ *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7057-Z, Memorandum Opinion and Order, DA 07-47 (rel. Jan. 10, 2007) (“*BendBroadband Order*”).

² En-Touch submitted a declaration in its Request that it believes meets all of the requirements set forth in the *BendBroadband Order*. En-Touch will also upon Commission request submit further declarations to confirm that it has provided notice to its subscribers, and that it has placed orders for enough DCT-700 set-top boxes to ensure that each of its customers can continue to view its video programming on their television sets.

Cable, Inc. and Millennium Telcom.³ The public interest and Commission precedent direct the same result here. The Commission should therefore expeditiously grant En-Touch's Request.

CEA completely ignored that En-Touch demonstrated its satisfaction of the requirements of the *BendBroadband Order*. In fact, CEA ignored the details of En-Touch's waiver request altogether, and consolidated its "response" with its response to other MVPD waiver requests that presented entirely different facts and arguments. In short, CEA's position is that the Commission should reflexively reject any and every request for waiver, no matter what the facts. CEA's approach is, by definition, contrary to the legal requirement that the Commission consider the particular circumstances and consumer benefits of individual waiver requests. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the 'public interest' for a broad range of situations, does not relieve it of an obligation to seek out the 'public interest' in particular, individualized cases.").

The few specific arguments CEA makes are simply wrong, at least in the case of En-Touch's Request. First, CEA suggests that "[t]he only extenuating circumstance for the Petitioners [sic] is their failure to demand compliant hardware from vendors, and vendors' failure to supply it."⁴ There is no question that "compliant hardware" is being developed; the reason that the Commission has decided to grant waivers to

³ *Millennium Telcom, LLC d/b/a OneSource Communications Request for Waiver Section 76.1204(a)(1) of the Commission's Rules*, CSR-7129-Z, CS Docket No. 97-80, Memorandum Opinion and Order, DA-07-2009 (rel. May 4, 2007) ("*Millennium Telcom Order*"); *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7130-Z, CS Docket No. 97-80, Memorandum Opinion and Order, DA-07-2010 (rel. May 4, 2007) ("*GCI Order*").

⁴ CEA Comments at 2.

BendBroadband, GCI and OneSource is that this compliant hardware is so expensive that it would undermine their ability to transition to an all-digital network prior to the DTV transition. While CEA states hollowly that “several vendors have expressed interest in [making] low-cost, limited functionality devices that would rely on CableCARDS,”⁵ the fact is that if CEA’s members had produced and offered to sell CableCARD-equipped set-top boxes at prices comparable to the DCT-700, these waivers might not be necessary.

CEA next argues, absurdly, that “If small and rural operators can continue to foreclose a local market for [retail] devices, their subscribers will continue to be effectively locked into leasing devices from the operators, while customers of larger operators reap the benefits of device innovation and competition, as fostered by separable security and common reliance.” Nothing in En-Touch’s Request would enable it to foreclose a retail market for navigation devices. En-Touch has not requested a waiver from its obligation to support CableCARDS, or from its obligation to use separable security (i.e., CableCARDS) in its own leased HD and DVR devices. This is one of many reasons why the Commission has already rejected CEA’s arguments. As the Commission explained:


we disagree with CEA’s assertions that the Waiver Request should be denied because of its potential impact upon competition in cable navigation devices and the common reliance rule. As discussed above and in the *BendBroadband Order*, we believe that a firm commitment to migrate to an all-digital network by a date certain would produce clear, non-speculative public interest benefits that, on balance, warrant grant of the Waiver Request.⁶

⁵ CEA Comments at 2-3.

⁶ *GCI Order* at ¶ 16.

For the foregoing reasons, and the reasons set forth in the *BendBroadband Order*, the *GCI Order*, the *Millennium Telcom Order*, and En-Touch's Request, the Commission should grant En-Touch's request for a waiver from the integration ban for the low-cost DCT-700 set-top box.

Respectfully submitted,

A handwritten signature in cursive script, reading "Riph Gerstemeier". The signature is written in dark ink and is positioned above the printed name and title.

Riph Gerstemeier
President and Chief Executive Officer
En-Touch Systems, Inc.
11011 Richmond Ave., Suite 400
Houston, Texas 77042
Phone: (281) 225-0501

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